



MEMORANDUM

MONROE COUNTY PLANNING & ENVIRONMENTAL RESOURCES DEPARTMENT

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To: Development Review Committee

From: Mitchell N. Harvey, AICP, Comprehensive Planning Manager *MNH*

Through: Townsley Schwab, Acting Director of Planning & Environmental Resources *TS*

Date: July 11, 2008

Subject: *Request for an Amendment to Section 9.5-258(b) of the Monroe County Code*

Meeting: July 22, 2008

I REQUEST

In response to direction by the Board of County Commissioner on June 18, 2008, the Growth Management Division is requesting to amend the Monroe County Code to allow the provision of wastewater service to properties located within the Coastal Barrier Resources System Overlay. This will give Monroe County the ability to more closely comply with the State requirement to provide centralized sewer services throughout the Florida Keys by July 1, 2010.

Chapter 9.5, Article VII Division 2 is proposed to be amended as follows:

Sec. 9.5-258. Coastal barrier resources system overlay district.

(b) *Application:* The Coastal Barrier Resources System Overlay District shall be overlaid on all areas, except for Stock Island, within federally designated boundaries of a Coastal Barrier Resources System Unit on current Flood Insurance Rate Maps approved by the Federal Emergency Management Agency, which are hereby adopted by reference and declared part of this chapter. Within this overlay district, the transmission and/or collection lines of the following types of public utilities shall be prohibited from extension or expansion: ~~central wastewater treatment collection systems~~; potable water; electricity; and telephone and cable. This prohibition shall not preclude the maintenance and upgrading of existing public utilities in place on the effective date of this ordinance and shall not apply to wastewater nutrient reduction cluster systems.

II PROCESS

In accordance with the provisions set forth in Sec. 9.5-511 of the Monroe County Code (MCC), amendments may be proposed by the Board of County Commissioners (BOCC), the

1 Planning Commission, the Director of Planning, or the owner or other person having a
2 contractual interest in property to be affected by a proposed amendment. The Director of
3 Planning shall review and process the text and map amendment applications as they are
4 received and pass them on to the Development Review Committee and the Planning
5 Commission for recommendation and final approval by the BOCC.
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7 The Planning Commission and the BOCC shall each hold at least one public hearing on a
8 proposed amendment to the text or to the land use district map. The Planning Commission
9 shall review the application, the reports and recommendations of the Department of Planning
10 & Environmental Resources and the Development Review Committee, and the testimony
11 given at the public hearing, and shall submit its recommendations and findings to the BOCC.
12 The BOCC shall consider the report and recommendation of and the testimony given at the
13 public hearings and may either adopt or not adopt an ordinance approving the proposed
14 amendment. Ordinances are then reviewed by the Florida Department of Community
15 Affairs.
16

17 III RELEVANT PRIOR COUNTY ACTIONS

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19 June 2000 – BOCC approved the Monroe County Wastewater Management Plan;
20 December 19, 2001 – BOCC approved Ordinance 043-2001 amending the Monroe County Land
21 Development Regulations to include Section 9.5-258, thereby establishing the Coastal Barrier
22 Resources System Overlay;
23 April 16, 2008 – BOCC approved the expansion of the Sumerland/Cudjoe/Sugarloaf Regional
24 Wastewater System to cover design for Big Pine Key and Lower Sugarloaf Key;
25 May 21, 2008 – BOCC approved central sanitary wastewater service to the property owners of
26 No Name Key through inclusion of the area in the Lower Keys Regional Service Area
27 wastewater treatment and collection system.
28 June 18, 2008 – BOCC discussed an item to direct staff to amend Section 9.5-258 Coastal
29 Barrier Resources System Overlay District of the Monroe County Code to eliminate the
30 prohibition of the establishment of central wastewater treatment collection systems and utilities
31 for no Name Key. Following public discussion, the BOCC approved a motion that the
32 prohibition of utilities is reworded such that the focus and priority be placed on wastewater first
33 and any discussion of electric or any other utility is deferred until the wastewater goal is
34 accomplished. The Board directed staff to amend the Land Development Regulations and the
35 Comprehensive Plan.
36 June 18, 2008 – BOCC approved a resolution to remove the developed residential area the
37 unrecorded plat on the east end of No Name Key, otherwise originally known as “Islands End”
38 from the Coastal Barrier Resource System.
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40 IV REVIEW OF APPLICATION

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42 A. *Consistency of the proposed amendment with the provisions and intent of the Monroe* 43 *County Year 2010 Comprehensive Plan:* 44

45 Existing Policy 102.8.5 discourages the extension of utilities within the Coastal Barrier
46 Resources System Overlay District. The proposed amendment to the Monroe County

1 Land Development Regulations clarifies the intent of Monroe County to provide
2 centralized wastewater service throughout the unincorporated area by July 1, 2010 as
3 mandated by the Chapter 99-395, Laws of Florida. An amendment to Policy 102.8.5 is
4 being considered concurrently with the proposed amendment to the land development
5 regulations.
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8 B. *Consistency of the proposed amendment with the provisions and intent of Chapter 9.5 of*
9 *the Monroe County, Land Development Regulations:*
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11 In accordance with MCC Sec. 9.5-511(d)(5)b., the BOCC may consider the adoption of
12 an ordinance enacting the proposed change based on one (1) or more of the following
13 factors:
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- 15 i. Changed projections (e.g., regarding public service needs) from those on which the
16 text or boundary was based:
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18 None.
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- 20 ii. Changed assumptions (e.g., regarding demographic trends):
21

22 None.
23

- 24 iii. Data errors, including errors in mapping, vegetative types and natural features
25 described in Volume 1 of the Monroe County Year 2010 Comprehensive Plan:
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27 None.
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- 29 iv. New issues;
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31 In order to improve near shore water quality, the State of Florida requires the
32 provision of centralized wastewater service to eliminate sewage disposal surface
33 water discharges within Monroe County by the July 1, 2010 (Chapter 99-395, Section
34 6, Laws of Florida). On June 18, 2008, the BOCC directed staff to amend the
35 Comprehensive Plan and Land Development Regulations to allow wastewater service
36 within the Coastal Barrier Resources System Overlay District. An amendment to
37 Policy 102.8.5 of the Monroe County Year 2010 Comprehensive Plan is concurrently
38 being considered to allow wastewater service within the Coastal Barrier Resources
39 System Overlay District. Provision of wastewater service within the coastal areas of
40 Monroe County will further the mandate of the State to improve near shore water
41 quality through the elimination of sewage disposal surface water discharges.
42

- 43 v. Recognition of a need for additional detail or comprehensiveness:
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45 The proposed amendment clarifies Monroe County's intent to be a better steward of
46 the natural environment by providing centralized wastewater service within Monroe

County, which includes areas within the Coastal Barrier Resources System Overlay District.

vi. Data updates:

None.

C. Consistency with the Principles for Guiding Development in the Florida Keys Area of Critical State Concern:

All land development regulations enacted, amended or rescinded within a area of critical state concern must be consistent with the Principles for Guiding Development, Section 380.0552(7), Florida Statutes. The proposed GOP amendment promotes and furthers the following Principles in Section 380.0552(7):

i. To strengthen local government capabilities for managing land use and development so that local government is able to achieve these objectives without the continuation of the area of critical state concern designation.

The proposed amendment strengthens Monroe County's ability to provide centralized wastewater service to existing and future land uses within the unincorporated area. Growth controls presently in place, such as the Residential Rate of Growth Ordinance (ROGO) and Non-residential Rate of Growth Ordinance (NROGO), effectively moderates how much new development will occur within Monroe County.

One focus of the Area of Critical State Concern program was environmental protection. The associated ACSC work program supports the efforts by Monroe County to improve near shore water quality by developing and implementing centralized wastewater and storm water management plans.

ii. To protect shoreline and marine resources including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.

The provision of centralized wastewater service will improve near shore water quality, enhancing the Florida Key's unique shoreline marine habitats which include mangroves, coral reefs, and seagrass beds,

iii. To ensure the maximum well-being of the Florida Keys and its citizens through sound economic development.

Centralized wastewater service is an essential component of residential and nonresidential development, reducing the incidence of near shore

1 water pollution that affects the well-being of both Florida Keys citizens
2 and its tourist visitors who are an essential supporter of the local
3 economy. Eco-Tourism has long been an economic driver within
4 Monroe County and the Florida Keys. Maintaining the health of near
5 shore habitat is consequently a high priority to the Florida Keys and its
6 citizens.

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10 iv. To limit the adverse impacts of development on the quality of water
11 throughout the Florida Keys.

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13 The provision of centralized wastewater service will improve near shore
14 water quality through the elimination of septic hot spots and the use of
15 uncontrolled individual septic systems whose contaminants leach into
16 the adjacent near shore waters.

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18 v. To protect the value, efficiency, cost-effectiveness, and amortized life
19 of existing and proposed major public investments, including sewage
20 collection and disposal facilities.

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22 The proposed amendment will give the Florida Keys Aqueduct
23 Authority the ability to design, construct, and maintain centralized
24 wastewater service throughout the Monroe County unincorporated area.
25 Economies of scale are extremely important to public utilities in our
26 current budgetary environment. Limitations on the expansion of
27 wastewater services are prohibiting economies of scale. Allowing
28 additional users to access the proposed centralized wastewater system
29 will promote lower user fees. The present Coastal Barrier Resource
30 System Overlay District limits our ability to do this.

- 31
32 vi. To protect the public health, safety, and welfare of the citizens of the
33 Florida Keys and maintain the Florida Keys as a unique Florida
34 Resource.

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36 The maintenance of near shore water quality is an essential element of
37 the Florida Keys. Pollution of the Keys' aquatic habitat can result in the
38 permanent degradation and destruction of the Florida Keys' unique
39 marine resources. Near shore water pollution has resulted in the
40 periodic closing of public beaches and promotes algae growth that
41 destroys coral reefs that are unique to the Florida Keys. Implementation
42 of a County-wide centralized wastewater system will significantly
43 reduce the level of near shore pollution resulting from individual septic
44 systems through protecting public health, safety and welfare as well as
45 our most important resource.
46

1 D. *Impact on Community Character:*
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3 The proposed amendment will allow existing and future land uses located within Coastal
4 Barrier Resources System Overlay the potential of being served by centralized
5 wastewater service, to promote, improve and protect near shore water quality. Monroe
6 County presently maintains several unique land use controls, such as the Tier System,
7 Rate of Growth Ordinance (ROGO), Nonresidential Rate of Growth Ordinance
8 (NROGO), and the Incidental Take Permit (ITP, 6/9/96). It is anticipated that the
9 proposed amendment will not affect the rate of new growth in Monroe County. However,
10 the proposed amendment will insure that as growth proceeds within the context of these
11 regulations, centralized wastewater service will be available concurrent with the impact
12 of existing land uses and new development. No changes in land use density, intensity or
13 community character is anticipated as a result of the proposed amendment. This
14 amendment will result in the enhancement of nearshore water quality, which will in turn
15 promote a more sustainable shoreline and nearshore aquatic environment.
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17 V FINDINGS OF FACT
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19 1. The Coastal Barrier Resources Act (CBRA) of 1982 established the Coastal Barrier
20 Resources System (CBRS) to restrict the federally subsidized development of coastal barrier
21 areas and specifically prohibited the "construction or purchase of any structure,
22 appurtenance, facility, or related infrastructure" 16 U.S.C. 3504(a)(1) in said areas.
23

24 2. Monroe County has 15 designated units of the CBRS which can be found listed in Table
25 3.21 of the Monroe County Year 2010 Comprehensive Plan Technical Document and
26 illustrated on the Existing Land Use Maps of the Comprehensive Plan Map Atlas.
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28 3. Objective 102.8 of the Monroe County Year 2010 Comprehensive Plan states: "Monroe
29 County shall take actions to discourage private development in areas designated as units of
30 the Coastal Barrier Resources System.
31

32 4. Policy 102.8.5 of Monroe County Year 2010 Comprehensive Plan states: "Upon adoption
33 of the Comprehensive Plan, Monroe County shall initiate efforts to discourage the extension
34 of facilities and services provided by the Florida Keys Aqueduct Authority and private
35 providers of electricity and telephone services to CBRS units".
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37 5. Current Flood Insurance Rate Maps published for the National Flood Insurance Program
38 by the Federal Emergency Management Agency, indicate there are five developed residential
39 areas (with five structures or less per acre) and one commercial area that fall within the
40 CBRS designation; and
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42 6. On December 18, 2001, the Board of County Commissioners adopted Ordinance No. 043-
43 2001, creating Section 9.5-258 of the Monroe County Code which established a Coastal
44 Barrier Resources System Overlay District, the purpose of which is to implement the policies
45 of the comprehensive plan by prohibiting the extension and expansion of specific types of

1 public utilities to or through lands designated as a unit of the Coaster Barrier Resources
2 System.

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4 7. Pursuant to Chapter 99-395, Laws of Florida, Monroe County has been mandated by the
5 State of Florida to provide a centralized sewer system by July 1, 2010 as a means of
6 improving near shore water quality within the Florida Keys.

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8 8. On June 18, 2008, the Growth Management Staff was directed by the Board of County
9 Commissioners to amend the comprehensive plan and land development regulations to
10 reword the prohibition on utilities such that the focus and priority be placed on wastewater
11 first and any discussion of electric or any other utility be deferred until the wastewater goal is
12 accomplished.

13 14 VI CONCLUSIONS OF LAW

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16 1. The proposed amendment will not affect the existing or future land use character of
17 Monroe County.
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19 2. The proposed amendment is inconsistent with the Monroe County Year 2010
20 Comprehensive Plan. Amendments to the Comprehensive Plan are being considered
21 concurrently.
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23 3. The proposed amendment will allow a more comprehensive implementation of a
24 centralized wastewater service system throughout the unincorporated area of Monroe
25 County as required by Chapter 99-395, Laws of Florida.
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27 VII RECOMMENDATION

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29 Staff recommends approval to the Development Review Committee.
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31 VIII ATTACHMENTS

- 32
33 1. Citizen Comment Letter Dated 7/7/08 from Alicia Roemmele-Putney
34 2. Monroe County Code and Comprehensive Plan Citation
35 3. Ordinance No. 43-2001
36 4. Coastal Barrier Resources Act
37 5. Coastal Barrier Resources Act Reauthorization
38 6. Chapter 99-395, Laws of Florida
39 7. Resolution No. 179-2008
40 8. CBRs No Name Key Unit FL-50 Map
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